

FINAL STATEMENT OF REASONS

Coho Salmon Incidental Take Assistance, 2007

[Approved on October 10, 2007]

Title 14 of the California Code of Regulations (14 CCR):

Amend:

§ 895.1	Definitions
§§ 916.9, 936.9 and 956.9	Protection and Restoration in Watersheds with Threatened or Impaired Values
§§ 923.9, 943.9, and 963.9	Roads and Landings in Watersheds with Threatened or Impaired Values

Adopt:

<u>§§ 916.9.1 and 936.9.1</u>	<u>Minimization and Mitigation Measures for Protection and Restoration in Watersheds with Coho Salmon</u>
<u>§§ 916.9.2 and 936.9.2</u>	<u>Additional Measures to Facilitate Incidental Take Authorization in Watersheds with Coho Salmon</u>
<u>§§ 916.11.1 and 936.11.1</u>	<u>Monitoring for Adaptive Management in Watersheds with Coho Salmon</u>
<u>§§ 923.9.1 and 943.9.1</u>	<u>Minimization and Mitigation Measures for Roads and Landings in Watersheds with Coho Salmon</u>
<u>§§ 923.9.2 and 943.9.2</u>	<u>Additional Measures to Facilitate Incidental Take Authorization in Watersheds with Coho Salmon</u>

UPDATED INFORMATION: OVERVIEW OF FINAL ADOPTED REGULATORY ACTION

On July 12, 2007, the Board voted to adopt revisions to the above regulations as proposed in the 45-Day Notice published on May 11, 2007, with the exception of a typographical error in § 923.9 [943.9 and 963.9]. These regulations facilitate Department of Fish and Games (DFG's) coho salmon recovery strategy, including policies to guide the issuance of incidental take authorizations for timber operations and activities under California Endangered Species Act (CESA). The adopted regulation facilitates DFG procedural regulations that implement these policies which planned for adoption in a separate regulation. The DFG's adopted procedural regulations rely in part upon the Board's adopted regulations that are the subject of this Final Statement of Reasons.

The adopted Board regulations set forth certain definitions and substantive measures in the FPRs that enable DFG to establish certain incidental take permitting procedures that meet the permit issuance criteria under CESA (Fish and Game Code § 2081,

subdivisions (b) and (c)) for incidental take permits, including a certification process for providing incidental take permits under CESA for timber operations and activities that may result in take of coho salmon. Currently, there is not a regulatory procedure for the issuance of incidental take permits for coho salmon that is integrated with the Forest Practice Act (FPA) and the FPRs. Without such an integrated approach, in addition to applying to the Department of Forestry and Fire Protection (CAL FIRE) for approval of timber harvesting plans, timberland owners would have to engage in a lengthy, separate process for obtaining incidental take permits for coho salmon from DFG for any timber operations and activities that would result in take of the species. This would involve separate environmental review processes and related costs to both the permit applicant and DFG.

General Findings

- The Board finds these regulations are necessary to ensure continued environmental protection measures for populations of coho salmon.
- The Board finds the regulation contributes to collaborative work with a related agency, the DFG, and has benefits for coho recovery and other future potential recovery projects.
- The Board finds the adopted regulation supports, through use of the Board's Certified Regulatory Program, an expedited method for CEQA compliance for the DFG regulation.
- The Board finds that the adopted regulation, and the DFG reliance on the Board's Certified Regulatory Program for adoption of the DFG regulation, provides financial relief to landowners who would have to otherwise participate in DFG environmental review for issuance of an incidental take permit. This relief provides time saving to landowners in the ITP issuance process.
- The Board finds that the regulation codifies coho protection requirements when Take is determined. This limits individual interpretation of specific protection requirements and provides consistency and certainty of regulatory requirements for landowners.
- The Board finds that the regulation addresses the appropriate geographic project scope for protection and recovery of coho salmon. The regulation and related DFG regulation established an opportunity in the future for joint regulatory efforts for harmonizing and streamlining regulations for all anadromous species.
- The regulation demonstrates the Board's proactive response and concern for protection of endangered species, particularly coho salmon. The regulation represents a step towards promoting protection of salmon with future activities such as identification of new information from emerging science, providing opportunities for additional protection and recovery actions.
- The Board finds the regulation reflects Board direction to staff to work with DFG to meet the requirements of FGC section 2112. Such work resulted in demonstrating the commitment for protection to endangered species as stated in the coho endangered species listing while limiting adverse economic effects to landowners. Limiting adverse economic effects results because protection

requirements set in the regulation are only required when DFG determines that a ITP is needed and not all projects in coho watersheds will require an ITP. Additionally, the adopted regulation provides landowner who cannot avoid a Take a level of certainty of how to obtain an ITP while providing protection for coho species and ability to implement harvesting projects.

- The adopted regulation provides a streamlined permitting system that meets the needs of DFG for protection of coho species, and for landowners implementing harvesting plans.
- The Board finds the adopted regulation is contingent upon adoption by DFG of the related regulation and approval of the related regulation by the Office of Administrative Law. The Board regulation should not become effective unless the related DFG regulation is adopted and becomes effective at the same time or earlier than the Board regulation.
- The Board intends to continue to review existing regulations for protection of all anadromous species.
- The Board considered all public comments and deliberated over responses in advance of adoption. The Board directed staff to incorporate into comment responses in the official records their public deliberations and comment responses.

AMENDMENT IN FINAL RULE LANGUAGE THAT WAS A CHANGE FROM THE ORIGINAL PUBLIC NOTICE TEXT PUBLISHED ON MAY 11, 2007.

A non-substantive typographical error was found in § 923.9 [943.9 and 963.9], Roads and Landings in Watersheds with Threatened or Impaired Values. The error was related mis-numbering the code section that specifies road standards for coho watershed. The in mislabeled text was changed from 916.9.1 and 916.9.2 to 923.9.1 and 923.9.2.

ALTERNATIVES TO THE REGULATION CONSIDERED BY THE BOARD AND THE BOARD'S REASONS FOR REJECTING THOSE ALTERNATIVES

The Board has considered alternatives to the regulation proposed for each regulatory section that was proposed for adoption or amendment.

Alternatives related to Definitions under 14 CCR § 895

1. Do not delete the provision specific to the previously established expiration date.

This alternative was rejected as it would not address the public problem this regulation is intended to address. Should these definitions be allowed to expire, the Department of Fish and Game (DFG) could not rely on them for appropriate application of the FPRs necessary to enable DFG to establish certain procedures for providing incidental take permits, namely a certification process, for timber operations and activities that may result in take of coho salmon that meet the issuance criteria for incidental take permits under the California Endangered Species Act (CESA). This would require DFG to adopt separate regulations under their authority to reestablish these definitions. This would result in

additional cost to landowners proposing timber harvesting within the geographic range of coho salmon to engage in a lengthy, separate permitting process with DFG under CESA, involving a separate environmental review process under the California Environmental Quality Act (CEQA). It would also result in additional cost to State agencies responsible for the protection of the species for additional rulemaking and associated additional environmental review under CEQA.

2. Adopt a provision under this section of the rules that specifies an alternative expiration date.

This alternative was rejected as it would not address the public problem this regulation is intended to address. Should these definitions be allowed to expire in the future at any alternatively specified date, DFG could not rely on them for appropriate application of the FPRs necessary to enable DFG to establish certain procedures for providing incidental take permits, namely a certification process, for timber operations and activities that may result in take of coho salmon that meet the issuance criteria for incidental take permits under CESA. This would require DFG to adopt separate regulations under their authority to reestablish these definitions either now or in the future should the Board choose to allow them to expire. This would result in confusion and additional cost to landowners proposing timber harvesting within the geographic range of coho salmon. Landowners would not know at the time of plan preparation whether or not the Board's rules would suffice to meet the issuance criteria for incidental take permits and may have to engage in a lengthy, separate permitting process with DFG under CESA, involving a separate environmental review process under the California Environmental Quality Act (CEQA). It would also result in additional cost to State agencies responsible for the protection of the species for additional rulemaking and associated additional environmental review under CEQA.

3. Do not adopt the proposed definitions or changes to the current definitions under 14 CCR § 895.1 presented in this rulemaking proposal.

This alternative was rejected as it would not address the public problem this regulation is intended to address. Should these definitions not be adopted, DFG could not rely on them for appropriate application of the FPRs necessary to enable DFG to establish certain procedures for providing incidental take permits, namely a certification process, for timber operations and activities that may result in take of coho salmon that meet the issuance criteria for incidental take permits under CESA. This would result in additional cost to landowners proposing timber harvesting within the geographic range of coho salmon to engage in a lengthy, separate permitting process with DFG under CESA, involving a separate environmental review process under CEQA. It would also result in additional cost to State agencies responsible for the protection of the species for additional rulemaking and associated additional environmental review under CEQA.

4. Incorporate changes to the rule language presented in 14 CCR § 895.1 based upon comments regarding a previous draft proposal entitled "Coho 2112 Strawman v6" dated 2/28/07, which was circulated by the Board prior to issuance of this public notice of rulemaking action.

The Board received written and oral public comments related to "Coho 2112 Strawman v6" at a workshop held by the Board on March 26, 2007. The Board considered these comments in drafting the proposed regulations. Reasonable

alternatives were incorporated into the proposed rule language presented in this notice of rulemaking action. Other portions of this alternative were rejected because no other reasonable comments presented to the Board were found to be necessary, considered to be more effective in carrying out the purposes for which the regulation is proposed, or that the Board would consider to be as effective and less burdensome to the affected private persons than the proposed regulatory action.

Alternatives related to coho watershed requirements of under 14 CCR § 916.9 [936.9, and 956.9]

1. Do not revise 14 CCR § 916.9, 936.9, and 956.9 to add the provision providing an exception for watersheds with coho salmon.

This alternative was rejected as it would not address the public problem this regulation is intended to address. Failure to adopt this proposed change to 14 CCR § 916.9, 936.9, and 956.9 would result in conflicting regulations in watersheds with coho salmon.

2. Incorporate changes to the rule language presented in 14 CCR § 916.9, 936.9, and 956.9 based upon comments regarding a previous draft proposal entitled “Coho 2112 Strawman v6” dated 2/28/07, which was circulated by the Board prior to issuance of this public notice of rulemaking action.

The Board received written and oral public comments related to “Coho 2112 Strawman v6” at a workshop held by the Board on March 26, 2007. The Board considered these comments in drafting the proposed regulations. Reasonable alternatives were incorporated into the proposed rule language presented in this notice of rulemaking action. Other portions of this alternative were rejected because no other reasonable comments presented to the Board were found to be necessary, considered to be more effective in carrying out the purposes for which the regulation is proposed, or that the Board would consider to be as effective and less burdensome to the affected private persons than the proposed regulatory action.

Alternatives related to Protection for Threatened and Impaired Watersheds requirements for coho watersheds under 14 CCR § 916.9.1 [936.9.1, and 956.9.1]

1. Do not adopt the additional rule language under 14 CCR §§ 916.9.1 and 936.9.1 intended to ensure that the “baseline” standards currently provided by the rules for the “Protection for Threatened and Impaired Watersheds”, do not expire December 31, 2007.

This alternative was rejected as it would not address the public problem this regulation is intended to address. Should the Board choose not to adopt these regulations, DFG could not rely on them for appropriate application of the FPRs necessary to enable DFG to establish certain procedures for providing incidental take permits, namely a certification process, for timber operations and activities that may result in take of coho salmon that meet the issuance criteria for incidental take permits under CESA. This would require DFG to adopt separate regulations under their authority to reestablish these definitions either now or in

the future should the Board choose to allow them to expire. This would result in confusion and additional cost to landowners proposing timber harvesting within the geographic range of coho salmon. Landowners would not know at the time of plan preparation whether or not the Board's rules would suffice to meet the issuance criteria for incidental take permits and may have to engage in a lengthy, separate permitting process with DFG under CESA, involving a separate environmental review process under the California Environmental Quality Act (CEQA). It would also result in additional cost to State agencies responsible for the protection of the species for additional rulemaking and associated additional environmental review under CEQA.

2. Incorporate changes to the rule language presented in 14 CCR §§ 916.9.1 and 936.9.1 based upon comments regarding a previous draft proposal entitled "Coho 2112 Strawman v6" dated 2/28/07, which was circulated by the Board prior to issuance of this public notice of rulemaking action.

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Alternatives related to additional measures to facilitate ITP authorization under 14 CCR § 916.9.2 [936.9.2, and 956.9.2]

1. Do not adopt the additional rule language under 14 CCR §§ 916.9.2 and 936.9.2 intended to provide enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional process of obtaining an incidental take permit by certification for coho salmon from DFG for any timber operations and activities that would result in take of the species.

This alternative was rejected as it would not address the public problem this regulation is intended to address. Should the Board choose not to adopt these regulations, DFG could not rely on them for appropriate application of the FPRs necessary to enable DFG to establish certain procedures for providing incidental take permits, namely a certification process, for timber operations and activities that may result in take of coho salmon that meet the issuance criteria for incidental take permits under CESA. This would require DFG to adopt separate regulations under their authority to reestablish these definitions either now or in the future should the Board choose to allow them to expire. This would result in confusion and additional cost to landowners proposing timber harvesting within the geographic range of coho salmon. Landowners would not know at the time of plan preparation whether or not the Board's rules would suffice to meet the issuance criteria for incidental take permits and may have to engage in a lengthy, separate permitting process with DFG under CESA, involving a separate environmental review process under the California Environmental Quality Act (CEQA). It would also result in additional cost to State agencies responsible for

the protection of the species for additional rulemaking and associated additional environmental review under CEQA.

2. Apply to all watersheds with threatened or impaired values the additional rule language under 14 CCR §§ 916.9.2 and 936.9.2 intended to provide enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional process of obtaining an incidental take permit by certification for coho salmon from DFG for any timber operations and activities that would result in take of the species.

This alternative was rejected as it exceeds the scope of the public problem this regulation is intended to address. This would result in additional cost to landowners proposing timber harvesting within the geographic range of any listed anadromous salmonid.

3. Incorporate changes to the rule language presented in 14 CCR §§ 916.9.2 and 936.9.2 based upon comments regarding a previous draft proposal entitled “Coho 2112 Strawman v6” dated 2/28/07, which was circulated by the Board prior to issuance of this public notice of rulemaking action.

The Board received written and oral public comments related to “Coho 2112 Strawman v6” at a workshop held by the Board on March 26, 2007. The Board considered these comments in drafting the proposed regulations. Reasonable alternatives were incorporated into the proposed rule language presented in this notice of rulemaking action. No other reasonable alternatives were presented in the comments that the Board considered to be necessary, considered to be more effective in carrying out the purposes for which the regulation is proposed, or that the Board would consider to be as effective and less burdensome to the affected private persons than the proposed regulatory action.

Alternatives related to additional measures to facilitate ITP authorization under 14 CCR § 916.11.1 [936.11.1, and 956.11.1]

1. Do not adopt the additional rule language under 14 CCR §§ 916.11.1 and 936.11.1 intended to establish a consistent monitoring and adaptive management program to determine the applicability, appropriateness, and effectiveness of the FPRs specific to operations that may have an impact on coho salmon and its habitat to ensure full compliance with the FPA and CESA.

This alternative was rejected as it would not address the public problem this regulation is intended to address. Should the Board choose not to adopt these regulations, the Board would not have a consistent monitoring and adaptive management program to determine the appropriateness and effectiveness of its rules and DFG could not rely on the Board's rules to meet the issuance criteria for incidental take applications for coho salmon and would be required to adopt separate regulations under their authority. This would result in additional cost to landowners proposing timber harvesting within the geographic range of coho salmon to obtain separate permits, as well as additional cost to State agencies responsible for the protection of the species as a result of additional rulemaking and additional environmental review required under CEQA and CESA.

2. Apply to all watersheds with threatened or impaired values the additional rule language under 14 CCR §§ 916.11.1 and 936.11.1 intended to establish a consistent monitoring and adaptive management program to determine the applicability, appropriateness, and effectiveness of the FPRs specific to operations that may have an impact on coho salmon and its habitat to ensure full compliance with the FPA and CESA.

This alternative was rejected as it would exceed the scope of the public problem this regulation is intended to address. This would result in additional cost to landowners proposing timber harvesting within the geographic range of any listed anadromous salmonid.

3. Incorporate changes to the rule language presented in 14 CCR §§ 916.11.1 and 936.11.1 based upon comments regarding a previous draft proposal entitled “Coho 2112 Strawman v6” dated 2/28/07, which was circulated by the Board prior to issuance of this public notice of rulemaking action.

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Alternatives related to excluding existing FPR requirements roads and landings to requirements in coho watersheds under 14 CCR § 923.9 [943.9, and 943.9]

1. Do not revise 14 CCR §§ 923.9, 943.9, and 963.9 to add the provision providing an exception for watersheds with coho salmon.

This alternative was rejected as it would not address the public problem this regulation is intended to address. Failure to adopt this proposed change to 14 CCR §§ 923.9, 943.9, and 963.9 would result in conflicting regulations in watersheds with coho salmon.

2. Incorporate changes to the rule language presented in 14 CCR §§ 923.9, 943.9, and 963.9 based upon comments regarding a previous draft proposal entitled “Coho 2112 Strawman v6” dated 2/28/07, which was circulated by the Board prior to issuance of this public notice of rulemaking action.

The Board received written and oral public comments related to “Coho 2112 Strawman v6” at a workshop held by the Board on March 26, 2007. The Board considered these comments in drafting the proposed regulations. Reasonable alternatives were incorporated into the proposed rule language presented in this notice of rulemaking action. No other reasonable alternatives were presented in the comments that the Board considered to be necessary, considered to be more effective in carrying out the purposes for which the regulation is proposed, or that the Board would consider to be as effective and less burdensome to the affected private persons than the proposed regulatory action.

Alternatives related to including standard requirements for roads and landings in coho watersheds under 14 CCR § 923.9.1 [943.9.1, and 943.9.1]

1. Do not adopt the additional rule language under 14 CCR §§ 923.9.1 and 943.9.1 intended to ensure that the “baseline” standards currently provided by the rules for the “Protection for Threatened and Impaired Watersheds”, do not expire December 31, 2007.

This alternative was rejected as it would not address the public problem this regulation is intended to address. Should the Board choose not to adopt these regulations, DFG could not rely on them to meet the issuance criteria for incidental take applications for coho salmon and would be required to adopt separate regulations under their authority. This would result in additional cost to landowners proposing timber harvesting within the geographic range of coho salmon to obtain separate permits, as well as additional cost to State agencies responsible for the protection of the species as a result of additional rulemaking and additional environmental review required under CEQA and CESA.

2. Incorporate changes to the rule language presented in 14 CCR §§ 923.9.1 and 943.9.1 based upon comments regarding a previous draft proposal entitled “Coho 2112 Strawman v6” dated 2/28/07, which was circulated by the Board prior to issuance of this public notice of rulemaking action.

The Board received written and oral public comments related to “Coho 2112 Strawman v6” at a workshop held by the Board on March 26, 2007. The Board considered these comments in drafting the proposed regulations. Reasonable alternatives were incorporated into the proposed rule language presented in this notice of rulemaking action. No other reasonable alternatives were presented in the comments that the Board considered to be necessary, considered to be more effective in carrying out the purposes for which the regulation is proposed, or that the Board would consider to be as effective and less burdensome to the affected private persons than the proposed regulatory action.

Alternatives related to additional measures to facilitate ITP authorization for roads and landings in coho watersheds under 14 CCR § 923.9.2 [943.9.2, and 943.9.2]

1. Do not adopt the additional rule language under 14 CCR §§ 923.9.2 and 943.9.2 intended to provide enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional process of obtaining an incidental take permit by certification for coho salmon from DFG for any timber operations and activities that would result in take of the species.

This alternative was rejected as it would not address the public problem this regulation is intended to address. Should the Board choose not to adopt these regulations, DFG could not rely on them for appropriate application of the FPRs necessary to enable DFG to establish certain procedures for providing incidental take permits, namely a certification process, for timber operations and activities that may result in take of coho salmon that meet the issuance criteria for incidental take permits under CESA. This would require DFG to adopt separate regulations under their authority to reestablish these definitions either now or in

the future should the Board choose to allow them to expire. This would result in confusion and additional cost to landowners proposing timber harvesting within the geographic range of coho salmon. Landowners would not know at the time of plan preparation whether or not the Board's rules would suffice to meet the issuance criteria for incidental take permits and may have to engage in a lengthy, separate permitting process with DFG under CESA, involving a separate environmental review process under the California Environmental Quality Act (CEQA). It would also result in additional cost to State agencies responsible for the protection of the species for additional rulemaking and associated additional environmental review under CEQA.

2. Apply to all watersheds with threatened or impaired values the additional rule language under 14 CCR §§ 923.9.2 and 943.9.2 intended to provide enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional process of obtaining an incidental take permit by certification for coho salmon from DFG for any timber operations and activities that would result in take of the species.

This alternative was rejected as it would exceed the scope of the public problem this regulation is intended to address. This would result in additional cost to landowners proposing timber harvesting within the geographic range of any listed anadromous salmonid.

3. Incorporate changes to the rule language presented in 14 CCR §§ 923.9.2 and 943.9.2 based upon comments regarding a previous draft proposal entitled "Coho 2112 Strawman v6" dated 2/28/07, which was circulated by the Board prior to issuance of this public notice of rulemaking action.

The Board received written and oral public comments related to "Coho 2112 Strawman v6" at a workshop held by the Board on March 26, 2007. The Board considered these comments in drafting the proposed regulations. Reasonable alternatives were incorporated into the proposed rule language presented in this notice of rulemaking action. No other reasonable alternatives were presented in the comments that the Board considered to be necessary, considered to be more effective in carrying out the purposes for which the regulation is proposed, or that the Board would consider to be as effective and less burdensome to the affected private persons than the proposed regulatory action.

POSSIBLE SIGNIFICANT ADVERSE ENVIRONMENTAL EFFECTS AND MITIGATIONS

The Board has not identified any adverse environmental effects from the proposed action. The proposed action establishes enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional process of obtaining incidental take permits through a certification process from DFG. The proposed action itself does not authorize incidental take of coho salmon, although it would facilitate DFG's establishment of a certification process for issuing incidental take permits. The proposed action would establish substantive requirements that are intended to minimize and fully mitigate impacts of the timber harvesting activities on coho salmon under Fish and Game Code section 2081, subdivisions (b). However, to the extent it can be argued that the proposed action could result in the incidental take of coho salmon from timber operations and activities, the proposed action includes measures that would minimize and fully mitigate those impacts, and thereby avoid jeopardy to the species. As a result, any significant adverse environmental effects would be mitigated to a level of less than significant. This is supported by an Initial Study that was prepared for the proposed action. The Initial Study is incorporated herein by this reference.

Environmental documentation was conducted pursuant to the Board's certified regulatory program outlined in PRC 21080.5 and 14 CCR sections 15251 and 15252.

ALTERNATIVES CONSIDERED TO THE PROPOSED REGULATORY ACTION THAT WOULD BE AS EFFECTIVE AND LESS BURDENSOME TO AFFECTED PRIVATE PERSONS

Pursuant to GC section 11346.9(a)(4), no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to affected small businesses than the proposed regulatory action. No other alternatives to these proposed regulations were considered by the Board at this time.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

See below: Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

An addendum to the Fiscal and Economic Impact Statement was made that included additional potential significant adverse economic impacts for adopted regulations sections. These additional economic impacts were previously disclosed in the Initial Statement of Reasons, but inadvertently excluded from the Fiscal and Economic Impact Statement.

ADDITIONAL RELEVANT DOCUMENTS RELIED UPON

The following are additional documents were provided for the Board's consideration during the rulemaking process to supplement previous information submitted to the Board and referenced in the *Initial Statement of Reasons*:

The Board incorporates into the official record the following documents. These documents were submitted to the Board prior to the official notice of the proposed action on May 11, 2007. The documents were on file with the Board and available for public review since their receipt. These documents are added pursuant to GC 11346.8(d).

AUTHOR	DATE of LETTER
Shiela Kuelh	7/6/06
Mike Chrisman	7/12/06
California Forestry Association	7/27/06
Sierra Club of CA/Mason	7/31/06
Big Creek	8/1/06
Shellito/Bonham	9/22/06
Perata	8/28/06
Vande Pol	8/27/06
Marvier	8/24/06
Twight	8/24/06
Crans	8/23/06
Stapleton	8/22/06
ODwyer	8/18/06
Vanderhorst	8/1/06
Big Creek	8/29/06
Able	8/29/06
Cal Poly/Dietterick/Auten	9/29/06
Tuttle/McCamman	9/29/06
Big Creek	12/5/06
Tuttle/McCamman	12/5/06
McCamman	12/5/06
California Forestry Association	12/21/06
California Licensed Foresters Association	1/4/07
Central Coast Forestry Assoc.	1/17/07
SPI/Feller	3/20/07
Campbell Timber Mang.	3/21/07
Central Coast Forestry Assoc.	3/21/07
Cal Trout	3/21/07
Sierra Club of CA	3/21/07
Timber Products Co.	3/21/07
California Licensed Foresters Association	3/21/07
California Forestry Association	3/20/07
Big Creek	3/21/07
Gualala Redwoods	3/25/07

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- **Complies with the California Environmental Quality Act (CEQA):** The Board has determined on the basis of its rulemaking process Certified Regulatory Program, information contained in the rulemaking file including an Initial Study, and on the Forest Practice Rules as Certified Regulatory Program, that proposed actions will not result in significant adverse environmental effects. The Board is the lead agency under the California Environmental Quality Act (Pub. Resources Code, § 21000, *et seq.*)(CEQA). The DFG is a responsible agency under CEQA. As such, in accordance with CEQA Guidelines section 15253, DFG intends to use the Board's substitute environmental analysis document prepared by the Board pursuant to its Certified Regulatory Program.
- **Mandate on local agencies and school districts:** None
- **Costs or savings to any State agency:** Adoption of the proposed regulations may result in savings to CAL FIRE in that if the streamlined permitting process is used, it will save CAL FIRE staff resources in timber harvest plan processes and/or consultations or plan reviews with DFG regarding coho salmon issues.
- **Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC § 17500:** None
- **Other non-discretionary cost or savings imposed upon local agencies:** None
- **Cost or savings in federal funding to the State:** None
- **Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states:** The adopted regulatory action facilitates an expedited certification process for obtaining incidental take permits from DFG for timber operations that may result in the take of coho salmon. The certification process would authorize the take of coho salmon, a listed species under CESA. The proposed regulations would minimize and fully mitigate impacts of the timber harvesting activities on coho salmon. Therefore, to the extent businesses are engaged in activities that will take coho salmon and choose to obtain incidental take permits through the certification process, the proposed regulatory action may result in adverse economic impacts directly affecting businesses, including the ability of California businesses to compete with businesses in other states. Refer to the Initial Statement of Reasons for summary of potential economic impacts.

The State Board of Forestry and Fire Protection has made a determination that the adoption and amendments of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The types of businesses that would be affected include those businesses engaged in

activities that may take coho salmon and choose to obtain incidental take permits through the certification process. The adopted regulation includes additional rules under 14 CCR § 916.9.2 [936.9.2] , § 923.9.2 [943.9.2] , and 916.11.1[936.11.] intended to provide enhancements to the FPRs to meet the requirements under CESA for minimization and full mitigation where the optional expedited procedural process of obtaining an incidental take permit is used.

- **Cost impacts on representative private persons or businesses:** Adoption of the regulations may result in adverse economic impacts as described above and in the Initial Statement of Reasons.
- **Significant effect on housing costs:** None
- **Create or eliminate jobs within California; Create new businesses or eliminate existing businesses within California; or affect the expansion of businesses currently doing business within California:** Adoption of the regulations may result in the creation and or the elimination of jobs. Given the potential for additional economic impacts as identified in the Initial Statement of Reasons, there may be the potential for adverse impacts on new or existing jobs; however, these impacts are unlikely to cause the elimination of existing businesses in California. Whether these potential impacts actually occur depends upon the extent to which timber operations and activities result in take of coho salmon under CESA, the level of compliance with the federal ESA, and the costs, if any, of minimizing and mitigating for take under CESA. Therefore, these impacts are speculative and difficult to estimate at this time.

In addition, there is the potential for creation of jobs and businesses, or expansion of businesses in California. The public sector may create new jobs as a result of mitigations such as road treatment, culvert replacement, and habitat enhancement. These jobs would likely be created largely in rural counties with high levels of unemployment. Also, private environmental consulting firms could benefit economically from assisting in the development and implementation of mitigation measures.

- **Effect on small business:** Adoption of the proposed regulations may result in adverse economic impacts as described above and in the Initial Statement of Reasons.
- **The proposed rules do not conflict with, or duplicate Federal regulations.**

Pursuant to Government Code § 11346.2(b)(5): In order to avoid unnecessary duplication or conflicts with federal regulations contained in the Code of Federal Regulations addressing the same issues as those addressed under the proposed regulation revisions listed in this *Statement of Reasons*; the Board has directed the staff to review the Code of Federal Regulations. The Board staff determined that no unnecessary duplication or conflict exists.

SUMMARY OF LAWS RELATING TO THE REGULATION

The Z'berg - Nejedly Forest Practice Act of 1973 (ref. Division 4, Chapter 8 of the Public Resources Code) establishes the State's interest in the use, restoration, and protection

of the forest resources. In this Act, Legislature stated its intent to create and maintain an effective and complete system of regulation for all timberlands. Public Resources Code Sections 4512, 4513 and 4551, gives the Board the authority to adopt such rules and regulations necessary to assure continuous growing and harvesting of commercial forest tree species; and to protect the soil, air, fish, wildlife and water resources.

PUBLIC COMMENTS AND RESPONSE

See: FSOR Addendum pages: 000036 to 000178

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